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BALANCED BUDGET CONSTITUTIONAL AMENDMENT

JULY 25 (legislative date, JULY 10), 1990.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S.J. Res. 183]

The Committee on the Judiciary, to which was referred the bill (S.J. Res. 183) to propose an amendment to the Constitution relating to a Federal balanced budget, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

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I. PURPOSE

The purpose of the proposed constitutional amendment is to establish in the basic document of the Nation the principle that the

Federal Government should not spend beyond its means. This principle of requiring a balanced budget can help impose on the Government fiscal responsibility and discipline. Such discipline will be necessary to prevent the crushing economic burden that future generations will be forced to bear if the national debt continues to expand.

II. LEGISLATIVE HISTORY

In 1936, Representative Harold Knutson of Minnesota proposed the first constitutional amendment to balance the budget (H.S. Res. 579, 74th Cong.). His proposal would have established a per capita limitation on the Federal public debt. Since that time numerous constitutional provisions have been proposed to require a balanced budget.

This legislation derives from work begun in the Senate Judiciary Subcommittee on the Constitution in the 96th Congress. Throughout 1979 and into the beginning of 1980, the subcommittee held a series of eight hearings across the country on the subject of a balanced budget amendment. Senators Hatch, Thurmond, DeConcini, Heflin and Simpson introduced S.J. Res. 126, which was reported out of the subcommittee on December 18, 1979, by a vote of 5 to 2. On March 15, 1980, the full Committee on the Judiciary defeated S.J. Res. 126 by a vote of 9 to 8.

The same principal sponsors reintroduced S.J. Res. 126 during the 97th Congress as S.J. Res. 58. Four additional days of hearings were conducted, again by the Subcommittee on the Constitution, in the early part of 1981. On May 6, 1981, the subcommittee favorably reported out S.J. Res. 58 by a vote of 4 to 0 following the adoption of an amendment in the nature of a substitute offered by Senator Hatch. On May 19, 1981, the full Committee on the Judiciary favorably reported S.J. Res. 58 by an 11 to 5 vote.

On July 12, 1982, the Senate began consideration of S.J. Res. 58. Following the adoption of a package of amendments by Senators Domenici and Chiles and the acceptance of an amendment by Senator Armstrong, the Senate on August 4, 1982, by a vote of 69 to 31, passed S.J. Res. 58. This marked the first time either House of Congress had approved such a measure.

On October 1, 1982, following a successful discharge petition effort, the House of Representatives considered H.J. Res. 350, the House counterpart to S.J. Res. 58. Although a substantial majority of the House voted in favor of the amendment, the 236-to-187 margin fell short of the necessary two-thirds vote.

In the 98th Congress, the Subcommittee on the Constitution held 2 days of hearings on S.J. Res. 5. On March 15, 1984, the subcommittee approved S.J. Res. 5 by a 4-to-1 vote and recommended the measure to the full committee. Following approval of an amendment offered by Senator DeConcini, the full Committee on the Judiciary approved S.J. Res. 5, as amended, on September 13, 1984, by a vote of 11 to 4. However, time ran out in the 98th Congress before S.J. Res. 5 could come before the Senate for a vote.

S.J. Res. 13 was introduced by Senator Thurmond on the first day of the 99th Congress. Following a hearing, the Subcommittee on the Constitution held a markup of S.J. Res. 13 on May 15, 1985,

at which the subcommittee adopted an amendment in the nature of a substitute offered by Senator Thurmond, and then approved S.J. Res. 13, as amended, on a unanimous 5-to-0 vote. After considering S.J. Res. 13 during May, June, and July, the full Judiciary Committee reported it favorably on July 11, 1985, by a vote of 11 to 7. At the same time, the committee approved S.J. Res. 225, a more simplified proposed amendment newly introduced by Senators Thurmond, Hatch, DeConcini, and Simon, by a vote of 14 to 4.

On March 25, 1986, the Senate defeated S.J. Res. 225 by a vote of 66 to 34, thus failing to achieve the constitutional two-thirds requirement by a single vote.

In the 100th Congress, the Subcommittee on the Constitution held hearings on S.J. Res. 11, S.J. Res. 112, and S.J. Res. 116, on March 23, 1988. On May 25, 1988, the subcommittee approved S.J. Res. 11, with an amendment in the nature of a substitute, by a vote of 3 to 2, and reported the measure to the full Committee on the Judiciary. The committee considered S.J. Res. 11 in a markup session on August 10, 1988, but no action was taken.

In the 101st Congress, Senator Simon chaired a hearing on S.J. Res. 2, S.J. Res. 9, and S.J. Res. 12 on July 27, 1989, before the Subcommittee on the Constitution. Testimony was heard from Senator Thurmond; Lewis K. Uhler, National Tax Limitation Committee; James Davidson, National Taxpayers Union; Dr. Jerome Ellig, Citizens for a Sound Economy; Dr. Richard Rahn, U.S. Chamber of Commerce; William Lucy, AFSCME; and Kenneth Melley, National Education Association.

On the same day, the subcommittee approved S.J. Res. 183, introduced that day by Senator Simon and incorporating ideas from each of the other three bills, by a vote of 4 to 2, and reported S.J. Res. 183 to the full Committee on the Judiciary.

On June 14, 1990, the committee accepted an amendment in the nature of a substitute offered by Senators Simon, Thurmond, DeConcini, Hatch, and Heflin, and then approved S.J. Res. 183, as amended, by a vote of 11 to 3.

III. DISCUSSION

While Congress has the ability to balance the Federal budget, it seems to lack the discipline to make the difficult choices that must be made. The national debt is now well over $3 trillion, three times what it was 10 years ago. There are no popular answers to the deficit problem. Yet the spree of deficit spending by our Federal Government must be curbed. We cannot continue to run staggering deficits year after year. A balanced budget amendment to the Constitution will help to provide the fiscal discipline we desperately need.

Interest on national debt

Interest payments on the national debt are now the second largest expenditure in the entire budget—higher than Social Security. For the first time in the Nation's history, interest may soon be the single greatest Government expense. Up from $75 billion in fiscal year 1980, this year the Federal Government will spend an estimated $264 billion on interest, an increase of 252 percent. Every day

the Government throws away $723 million on interest payments. None of this money goes toward education, health care, or the battle against drugs and crime. Spending more and more on interest leaves fewer resources to spend on goods and services to address the many serious problems facing the Nation.

Furthermore, those interest payments work to redistribute income in the wrong direciton. The money for these enormous payments comes out of the pockets of taxpayers, primarily low- and middle-income families. these same working families are also burdened by the high interest rates that the deficit sustains. On the other end of the scale are the more fortunate and well-off, who can afford to invest in Treasury bonds and receive high interest payments. Increasingly, these payments are going overseas, to wealthy investors in other countries.

Statutory efforts

Critics of the balanced budget amendment argue that Congress doesn't need a constitutional amendment to balance the budget; Congress can achieve that goal statutorily, right now, without waiting to ratify a constitutional amendment. Technically, these arguments are of course correct. The balanced budget amendment provides no new authority to cut spending or raise revenues. However, recent efforts have shown that Congress does not have the will to balance the budget.

It has been more than 20 years since the Federal Government ran a surplus; the last budget surplus was in 1969. That is the onbly time in 30 years that we have balanced the budget. Simply enacting responsible budgets is not easy. While a spending program often has a particular constituency that strongly supports it, the general interest in restricting spending is diffuse.

Statutory efforts to balance the budget previously have failed, because it is too easy for Congress to simply change its mind and rescind its previous declarations. Statutory efforts are vulnerable to a change of heart or a weakening of resolve. Deficit reduction targets in such legislation can be continually changed, and the legislation can be several years in operation before the budget must be balanced. An amendment to the Constitution forces the Government to live within its means. S.J. Res. 183 requires a balanced budget in 2 years.

Implementation and enforcement

At the executive meeting of the full Committee on the Judiciary at which S.J. Res. 183 was considered and passed, concerns were raised about the implementation and enforcement of a balanced budget amendment.

S.J. Res. 183 contains the flexibility that an amendment to the Constitution must have. It does not prescribe a particular mechanism that Congress must employ in order to achieve a balanced budget. Instead it leaves political decisions to the political system. The amendment contemplates that Congress will execute its responsibilities under the amendment through exercise of its currently existing authority. The Constitution already empowers Congress with such authority. Section 8 of article I grants Congress the power "[t]o make all Laws which shall be necessary and proper

* * *." Furthermore, Members of Congress are required by article VI generally to "support this Constitution" while the President is required by article II, section 1, clause 7, to "preserve, protect, and defend the Constitution".

The committee expects fidelity to the Constitution, as does the American public. Both the President and Members of Congress swear an oath to uphold the Constitution, including any amendments thereto. Honoring this pledge requires respecting the provisions of the proposed amendment. Flagrant disregard of the proposed amendment's clear and simple provisions would constitute nothing less than a betrayal of the public trust. In their campaigns for reelection, elected officials who flout their responsibilities under this amendment will find that the political process will provide the ultimate enforcement mechanism.

It is the committee's view that:

(1) the language and the intent of S.J. Res. 183 are clear;

(2) Congress and the President are to abide by this language and intent; and

(3) where necessary, Congress is to enact legislation that will better enable the Congress and the President to comply with the language and intent of the amendment.

The experience in the States

In contrast to Federal fiscal policies, continued deficit spending by the State has been a rarity. More States incur general surpluses than incur general deficits. 48 States have constitutional provisions limiting their ability to incur budget deficits. While there are significant differences in the problems and resources that the State and Federal Government face, the State experience is nonetheless instructive. The constitutional constraints have proven to be workable in the States and have not inhibited their ability to perform their most widely accepted functions. Because it has been required, State legislatures have learned to operate effectively within the external limitation of their constitutions.

Conclusion

A balanced budget amendment steers a self-disciplined course which protects our future economic strength and national standard of living. Both flexibility and a strong mandate are needed for a fiscally responsible path for our Nation. S.J. Res. 183 provides both these elements. A constitutional balanced budget amendment can serve as a moral and legal beacon to guide the nation in the fundamental choices of governance.

IV. VOTE OF THE COMMITTEE

On June 14, 1990, with a quorum present, the Committee on the Judiciary, by a vote of 11 to 3, ordered the bill, S.J. Res. 183, favorably reported.

V. TEXT OF S.J. RES. 183

A JOINT RESOLUTION proposing an amendment to the Constitution relating to a Federal balanced budget

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within 7 years after its submission to the States for ratification:

"ARTICLE —

"Section 1. Total outlays of the United States for any fiscal year shall not exceed total receipts to the United States for that year, unless Congress approves a specific excess of outlays over receipts by three-fifths of the whole number of each House on a rollcall vote.

"Section 2. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that year in which total outlays do not exceed total receipts.

"Section 3. Any bill to increase revenue shall become law only if approved by a majority of the whole number of each House by a rollcall vote, unless such bill is approved by unanimous consent.

"Section 4. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.

"Section 5. Total receipts shall include all receipts of the United States except those derived from borrowing. Total outlays shall include all outlays of the United States except those for repayment of debt principal.

"Section 6. This article shall take effect beginning with the second fiscal year beginning after its ratification."

VI. SECTION-BY-SECTION ANALYSIS

Section 1

The key provision of S.J. Res. 183 is contained in section 1, which establishes as a fiscal norm the concept of a balanced Federal budget. This section mandates that "Total outlays of the United States for any fiscal year shall not exceed total receipts to the United States for that year, * * *."

The section does not specify the process that Congress must follow in order to achieve a balanced budget. The committee recognizes that there may be many equitable means of reaching that goal; it is therefore not the committee's intent to dictate any particular fiscal strategy upon the Congress. Rather, the committee expects the Congress to use its full range of legislative powers in order to comply with the amendment.

Section 1 also contains an exception; the balanced budget requirement applies "* * * unless Congress approves a specific excess of outlays over receipts by three-fifths of the whole number of each House on a rollcall vote." This provision preserves to Con-

gress flexibility and the capacity to respond to economic crises without sacrificing accountability.

It is the intent of the committee that the Congress and the President, pursuant to legislation or through exercise of their powers under the first and second articles of the Constitution, shall ensure that outlays do not exceed receipts for a fiscal year. This neither anticipates nor requires any alteration in the balance of powers between the legislative and executive branches, but merely imposes an additional responsibility upon each, to be fulfilled through the exercise of existing authorities.

"* * * *fiscal year* * * *" is intended as a term defined by statute and, as such, is to have no constitutional standing independent from its statutory definition. The amendment does not require an immutable definition; other fiscal years could be defined without necessarily straining the intent of the amendment.

"* * * *shall not exceed* * * *" is, simply put, a clear mandate: a command. It means that outlays may not be greater than receipts for any given fiscal year. Receipts may exceed outlays.

"* * * *a specific excess of outlays over receipts* * * *" is intended to identify the deficit that Congress must approve by rollcall vote. The committee intends that the substance of such a vote be restricted to the issue of such a deficit. By forcing Congress to identify and confront any particular deficit, this clause will promote accountability.

"* * * *by three-fifths* * * *" identifies the minimum proportion of the total membership of each House needed for action by the Congress. Under current law, three-fifths of the Senate membership is 60, and of the House of Representatives is 261. Vacancies would reduce the minimum majorities.

"* * * *The whole number of each House* * * *" is intended to be consistent with the phrase "the whole number of Senators" in the 12th amendment to the Constitution, denoting the entire membership of each individual House of Congress in turn.

"* * * *on a rollcall vote.*" specifies what is already implicit. Assuring that the required three-fifths vote has been recorded will require a rollcall vote. The committee makes this provision explicit in order to emphasize accountability in the approval of any deficit.

Section 2

Section 2 requires that "Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that year in which total outlays do not exceed total receipts." This section reflects the Committee's belief that sound fiscal planning should be a shared governmental responsibility. It is the committee's expectation that, charged with like responsibilities, the President and the Congress will more readily collaborate in fiscal planning.

"* * * *Prior to each fiscal year* * * *" is intended to set the deadline that the President's transmission of a budget proposal must occur before the first day of the statutory fiscal year.

"* * * *the President shall transmit to the Congress* * * *" is intended to impose on the President a constitutional duty to communicate to the Congress a proposed budget that is balanced. Article II enumerates several duties currently required of the President,

including delivering the State of the Union address, receiving foreign Ambassadors, and Commissioning Officers of the United States. It is the Committee's belief that this new duty similarly merits Constitutional status.

"* * * *a proposed budget* * * * *in which total outlays do not exceed total receipts* * * *." is intended to require a responsible proposal which should anticipate a level of outlays no greater than the level of receipts. Such a proposal necessarily requires a projection of future events. The Committee anticipates good faith on the part of the President with respect to projected economic trends.

Section 3

By requiring approval "* * * by a majority of the whole number of each House by a rollcall vote, * * *" for "Any bill to increase revenue * * *", section 3 improves congressional accountability for revenue measures. The section includes an exception for bills that are "* * * approved by unanimous consent." This is intended to allow noncontroversial measures which have relatively insignificant or even incidental effects on revenues to pass without requiring a rollcall vote. Practically, as any member can call for the yeas and nays on any measure this clause would except only truly noncontroversial bills.

"* * * *Any bill to increase revenue* * * *" is intended to include those measures whose intended and anticipated effect will be to increase revenues to the Federal Government.

"* * * *by a majority of the whole number of each House by a rollcall vote,* * * *" is intended, like similar provisions in section 1, to identify the minimum proportion necessary to approve the relevant measure, except that instead of three-fifths, the requirement here is merely a majority. The terms relating to "the whole number of each House" and "rollcall vote" are intended to have the same meaning as in section 1.

"* * * *approved by unanimous consent* * * *." is intended to identify by procedural process those measures the approval of which does not require a rollcall vote. Only if not a single member objects may such a measure pass without such a vote.

Section 4

This section guarantees that Congress will retain maximum flexibility in responding to so clear a national security crisis as a declared war.

"* * * *may waive* * * *" is intended to provide Congress with discretionary authority to operate outside of the provisions of particular sections of this amendment in the event of declarations of war. Such a waiver would be by concurrent resolution of Congress, which would not have to be submitted to the President for approval.

"* * * *the provisions of this article* * * *" is intended to refer primarily to sections 1, 2, and 3 of the amendment. The Congress may waive any or all of these provisions.

"* * * *declaration of war* * * *" is intended to be construed in the context of the powers of the Congress to declare war under article 1, section 8. The committee intends that ordinary and prudent preparations for a war perceived by Congress to be imminent be

funded fully within the limitations imposed by the amendment, although Congress may establish higher levels of spending or deficits for these or any other purposes under section 1.

"* * * *for any fiscal year* * * * *is in effect.*" is intended to require a waiver of the provisions of the amendment each year. Congress may not adopt a waiver resolution which applies to more than one fiscal year. Rather, Congress must annually adopt a separate waiver for the fiscal year at issue.

Section 5

This section is intended to better define the relevant amounts that must be balanced. The following is a further elaboration of terms:

"* * * *total receipts* * * *" is intended to include all moneys received by the Treasury of the United States, either directly or indirectly, through Federal or quasi-Federal agencies created under the authority of acts of Congress, except those derived from borrowing. In present usage, receipts is intended to be synonymous with the definition of "budget receipts," which are not meant to include offsetting collections or refunds.

"* * * *except those derived from borrowing* * * *" is intended to exclude from receipts the proceeds of debt issuance. To borrow is to receive with the intention of returning the same or equivalent. It is intended that those obligations the title to which can be transferred by the present owner to others, like Treasury notes and bonds, be excluded from receipts. Contributions to social insurance programs, though also carrying an implied obligation, are not transferable and should be included in receipts.

"* * * *total outlays* * * *" is intended to include all disbursements from the Treasury of the United States, either directly or indirectly through Federal or quasi-Federal agencies created under the authority of acts of Congress, and either "on-budget" or "off-budget," except those for repayment of debt principal.

Among the Federal programs that would not be covered by S.J. Res. 183 is the electric power program of the Tennessee Valley Authority. Since 1959, the financing of that program has been the sole responsibility of its own electric ratepayers—not the U.S. Treasury and the Nation's taxpayers. Consequently, the receipts and outlays of that program are not part of the problem S.J. Res. 183 is directed at solving.

"* * * *except those for repayment of debt principal.*" is intended to exclude from outlays repurchase and/or retirement of Federal debt. Principal is intended to be distinguished from interest and refers to a capital sum due as a debt.

Section 6

This section merely provides for the amendment to take effect some specified time after its is adopted, so as to allow Congress to adopt the necessary procedures to implement the amendment, and to allow the process to start from the beginning of the fiscal process.

"* * * *beginning with the second fiscal year beginning* * * *" means that the obligations imposed upon Congress and the President by this amendment shall be complied with the fiscal year be-

ginning at least 1 full fiscal year and less than 2 full fiscal years after the date of ratification.

" * * its ratification."* is intended to be construed as ratification of this article under article V of the Constitution.

VII. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 18, 1990.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S.J. Res. 183, a joint resolution proposing an amendment to the Constitution relating to a federal balanced budget, as ordered reported by the Senate Committee on the Judiciary, June 14, 1990.

S.J. Res. 183 would propose an amendment to the Constitution to require that total outlays of the United States for any fiscal year not exceed total receipts for that year, unless Congress approves a specific excess of outlays over receipts by a three-fifths vote in each House. The proposed budget submitted by the President would have to be balanced as well. Such provisions could be waived for any fiscal year in which a declaration of war is in effect. The amendment would have to be ratified by three-fourths of the states within seven years of its submission for ratification, and would take effect beginning with the second fiscal year after its ratification.

The budgetary impact of this amendment is very uncertain, because it depends on when it takes effect and the extent to which the Congress would exercise the discretion provided by the amendment to approve budget deficits. The earliest the amendment could take effect would be for fiscal year 1993, if it were approved by the 101st Congress and ratified by the requisite number of states by September 30, 1991.

The Congress could choose to eliminate the deficit by reducing spending, by increasing revenues, or by some combination of the two. Under CBO's March 1990 baseline projections, the deficit in fiscal year 1993 will be 2 percent of the Gross National Product (GNP). If the amendment takes effect and the Congress chooses to balance the budget by reducing outlays, total outlays in 1993 would have to be reduced by about 9 percent so as not to exceed revenues. Such a reduction would result in total outlays of about 19 percent of GNP. If, on the other hand, the Congress were to choose to maintain baseline spending levels and to eliminate the deficit by raising revenues, a revenue increase of about 10 percent would be required in 1993. The Congress could choose any one of many combinations encompassing both revenue increases and outlay reductions totaling 2 percent of GNP.

Enactment of this legislation would result in no significant direct cost to state and local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mitchell Rosenfeld, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

VIII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that S.J. Res. 183 will not have direct regulatory impact.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds no changes in existing law caused by passage of S.J. Res. 183.

ADDITIONAL VIEWS OF MR. BIDEN

Chronic Federal budget deficits must be eliminated and a way must be found to prevent them from recurring. We can no longer afford to defer the issue or seek tentative, incomplete remedies. Failure to find a solution will only serve to add to the growing mountain of debt that threatens to bury our children's future.

Throughout my nearly 18 years in the Senate, I have worked in favor of legislation to increase control over spending and reduce budget deficits. I have supported: budget "freeze" proposals, which would affect all Federal spending programs across the board; the line-item veto, which would give President the ability to eliminate special interest, "pork-barrel" spending in the annual budget; the Gramm-Rudman-Hollings law, which established annual deficit ceilings designed to eventually balance the budget; and sunset legislation, which would automatically terminate Federal spending programs and tax breaks after a specified period and require them to be reviewed and reapproved on a regular basis.

The Gramm-Rudman law has been partially successful. Deficit ceilings have forced Congress and the President to limit spending in order to avoid automatic cuts. By establishing a yardstick for measuring fiscal responsibility, the law has highlighted the deficit problem and made deficit reduction a top priority.

Unfortunately, many of the other proposals I have supported have never been implemented. "Freeze" proposals, the line-item veto, and sunset legislation have consistently been rejected by Congress as possible tools of budget reduction. Although I have never viewed these remedies as a panacea for our budget dilemma, there is no question that we would be in a significantly better deficit situation today had they been enacted.

It has become an annual ritual to address each year's deficit reduction impasse with ad hoc negotiations between Congress and the White House. Such negotiations are currently underway and I am hopeful of success. But annual budget "summits" are no substitute for measures to guarantee fiscal responsibility.

The balanced budget amendment principle is sound and I support it. I believe, however, that S.J. Res. 183 in its present form is not sufficiently flexible and workable, and I hope that the full Senate will agree to make necessary changes.

As reported, the amendment states that outlays of the Government cannot exceed receipts. I have three problems with this provision. First, it could be construed as giving the President the ability to impound funds already appropriated by Congress. It would not be difficult for the executive branch, which primarily controls outlays, to withhold funds, and cite the amendment as justification. The legislative branch must retain its preeminence in appropriations, and S.J. Res. 183 should be clarified to ensure that it does. My proposal to grant the President line-item veto power would

achieve spending restraint without impinging on Congress' appropriations authority. Second, no mention is made of enforcement. Who is going to ensure that outlays do not exceed receipts? It would be unwise to embroil the courts in fiscal policy, but the amendment fails to provide an acceptable alternative. Third, this amendment provides no practical measure to ensure that the Federal Government does not end the fiscal year in the red. It is not clear, for example, what would happen if the Government underestimates spending and overestimates revenue, as it has done in the past.

In my view, S.J. Res. 183, as reported, is not flexible enough to deal with emergencies. It includes a waiver only for years in which a declaration of war is in effect. What about threats to national security for which a declaration of war has not been issued, but which nonetheless demand action? What about economic emergencies? This amendment would hamper the Government's ability to use fiscal policy to counteract a recession. It could force deep spending cuts during an economic downturn, with potentially disastrous effects. During periods of high inflation, S.J. Res. 183 might prevent the Government from providing cost-of-living increases in benefit programs such as veterans' disability payments. A balanced budget amendment should account for such problems.

The sponsors of S.J. Res. 183 believe that its clause allowing a waiver by a three-fifths, or supermajority, vote of Congress is sufficient to address unforeseen circumstances such as those just mentioned. I am not convinced by this argument. In a national emergency, swift and decisive action is needed. But it can be extremely difficult and time consuming to obtain a supermajority vote. Barring a declaration of war, we would be left with no alternative.

It is my hope that reporting this legislation to the full Senate will prompt debate and action. But at the same time, portions of S.J. Res. 183 need to be reworked if it is to provide the flexibility and workability that a constitutional amendment requires.

JOSEPH R. BIDEN, Jr.

ADDITIONAL VIEWS OF MR. KOHL

S.J. Res 183 is a rational response to the threat poised by our persistent Federal deficits. It is also a reasonable attempt to accommodate the often inconsistent aims of those who want to see a balanced budget requirement written into our Constitution. I commend its author, Senator Simon, for the work he has done putting this amendment together.

Although I support the intent of the amendment, I have reserved my right to address a number of problems I see in it. Let me briefly identify my concerns.

Policy presumptions.—In my view, the goal of a balanced budget amendment ought to be to require a balanced budget. The nature of that budget and how we achieve balance should be determined by the Congress rather than the Constitution. Consequently, I am concerned that section 3 of S.J. Res 183, by requiring a majority of the whole number of each House to pass any bill increasing revenues, may create a policy presumption that favors one approach (spending cuts) by making it more difficult to implement another (revenue increases). And, of course, any amendment to S.J. Res 183 that requires a supermajority to pass revenue increases would most certainly create such a constitutionally sanctioned policy presumption.

Such an amendment would impose, through the Constitution, a voting procedure for revenue raising legislation different from, and more stringent than, the procedure in place for all other legislation, including legislation which would balance the budget by reducing spending.

The Constitution uses special voting procedures—more specifically, requirements of two-thirds majority votes—for matters that define the separation of powers between Congress and the President: veto overrides, impeachment convictions by the Senate, constitutional amendments, and Senate approval of treaties. One other section includes a two-thirds vote requirement: Article 14, section 3 which allows Congress to waive, by a two-thirds vote, the prohibition against holding public office imposed on those who participated in rebellion against the United States.

An amendment requiring a supermajority to pass tax increases, however, does not define a relationship central to the separation of powers, nor does it address an unforeseen event, like the end of the Civil War, that alters the basic political makeup of the United States. Such an amendment would simply write into the Constitution our current distaste for raising revenues.

I understand that there are those who feel strongly that Congress is too quick to tax and spend. There are also those who feel strongly that military spending should be cut, that the ownership of guns should be restricted, or that funding for the arts should be maintained. No one, however, has suggested that the Constitution

require a supermajority vote on bills dealing with those subjects. It is just as inappropriate to require a supermajority for revenue raising bills.

The Constitution sets in stone the fundamental principles of government; the Congress and the President operate within those principles to set the policies that govern the day-to-day relationship between the U.S. Government and its citizens. The debate over "new taxes" or "no new taxes" is a policy debate that belongs in the category of day-to-day operations. If we try to resolve that debate in the Constitution, we unfairly limit the ability of future generations to make basic decisions about fiscal policy. We would also be formalizing a misunderstanding of the Constitution's role in our system of government.

Economic flexibility.—Section 4 of S.J. Res 183 allows a waiver of the balanced budget requirement in times of war. I would propose adding to section 4 a waiver of the amendment's requirements in periods of recession as well.

Economic disaster can be as devastating to a country as an enemy attack. Congress and the administration need flexibility to fight ballooning inflation, disappearing jobs, and plummeting incomes. Few would object to deficit spending to repel a foreign invasion; just as few would question deficit spending to avoid another Great Depression.

Existing budget law recognizes the need for flexible fiscal policy both in times of war and in times of economic recession. The Balanced Budget and Emergency Deficit Control Act, otherwise known as Gramm-Rudman-Hollings, waives its sequester requirements in periods of war or recession. A similar option ought to be included in this proposal.

Enforcement.—There was some discussion of how section 1 might be enforced during the committee's markup of this bill, but I believe that this issue should be pursued further on the floor. My particular concern is how Congress will determine whether it is in compliance with the amendment—that is, whether outlays are in line with receipts. As anyone involved with the budget process knows, estimates of the budget deficit or surplus for a certain year are made beginning in at least the previous year, and those estimates are updated throughout the year in question and for years after that. At what point will we be able to announce the final budget figure, and that we are—or were—in compliance with the Constitution? What steps will we take to assure that the economic assumptions we use are the best available? And how will we prevent efforts to "solve" the deficit problem by simply moving some programs "off budget" or refining our calculation of "revenues?"

I favor the principle set forth in S.J. Res. 183, and, for that reason, I raise these several questions. Our persistent deficits are a fundamental enough problem to demand an amendment to the Constitution. They are not a fundamental enough problem to warrant a hastily drawn or unworkable amendment to the Constitution. We have a duty to that document to add to it only in a considered and serious manner. I look forward to the floor debate ahead during which I am sure we will work to address the few problems outstanding in S.J. Res. 183

HERBERT KOHL.

ADDITIONAL VIEWS OF MESSRS. HUMPHREY AND GRASSLEY

S.J. Res. 183, the balanced budget amendment reported favorably by the Judiciary Committee, represents an important step in the effort to enact a constitutional amendment to enforce budgetary discipline on Congress. The committee's bipartisan approval of this resolution, on a vote of 11 to 3, sends a strong signal of our commitment to enact a sound balanced budget amendment.

While we join in the majority report on this measure, we would like to add a brief comment on an important issue that warrants prudent consideration when S.J. Res. 183 is taken up by the full Senate.

Some supporters of a balanced budget amendment have expressed concern regarding the adequacy of the tax limitation provision incorporated in section 3 of the resolution. Section 3 provides:

> Any bill to increase revenue shall become law only if approved by a majority of the whole number of each House by a rollcall vote, unless such bill is approved by unanimous consent.

Section 3 provides some measure of discipline on the enactment of revenue-increasing measures—that is, tax increases—but some balanced budget supporters believe that greater discipline is required. While S.J. Res. 183 requires a three-fifths rollcall vote to run a deficit, it requires only a majority vote of all members of each House to increase revenues. The U.S. Chamber of Commerce, for one, argues that the lesser restraints on revenue increases could lead to an increased tendency toward raising taxes as the mechanism for balancing the budget. The Chamber therefore urges consideration of a more stringent requirement, such as a three-fifths vote, for the approval of revenue increases.

We believe that this issue warrants careful consideration as we debate and deliberate S.J. Res. 183. Effective tax limitation provisions should be an integral part of a sound balanced budget amendment.

GORDON HUMPHREY.
CHUCK GRASSLEY.

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